Supreme Court, U.S.
FILED

No. 001509 MAR 30 2001

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

STEVEN CAMBRA, Warden, *Petitioner,*

v.

MICHAEL ANTHONY, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

BILL LOCKYER
Attorney General of the State of California
DAVID P. DRULINER
Chief Assistant Attorney General
RONALD A. BASS
Senior Assistant Attorney General
STAN M. HELFMAN
Supervising Deputy Attorney General
SHARON G. BIRENBAUM
Deputy Attorney General
Counsel of Record
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5870
Fax: (415) 703-1234
Counsel for Petitioner

QUESTIONS PRESENTED

1. Does the "relation back" doctrine of Rule 15(c) of the Federal Rules of Civil Procedure (FRCP) apply to habeas corpus proceedings? If so, may a petitioner use the relation back doctrine to amend a petition with newly exhausted claims that would otherwise be untimely under the Antiterrorism and Death Penalty Act of 1996 (AEDPA) and which are unrelated to any of the issues in the pending petition?

2. In determining tolling under the AEDPA, must a federal court apply the mailbox rule of *Houston v. Lack*, 487 U.S. 266 (1988) to the filing of a habeas corpus petition in state court, even though the state does not apply such a rule?

TABLE OF CONTENTS

	Page
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	2
STATUTES AND RULES	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
ARGUMENT	9
I. THE NINTH CIRCUIT'S APPLICATION OF THE RELATION BACK DOCTRINE IN HABEAS CORPUS CASES EFFECTIVELY NULLIFIES THE AEDPA'S ONE YEAR STATUTE OF LIMITATIONS	9
A. FRCP Rule 15(c) Does Not Apply To Habeas Corpus Actions Brought By State Prisoners	9
B. Even If Rule 15(c) Applies To Habeas Corpus Proceedings, It Can Only Apply If The New Claims Relate To Claims In A Currently Pending Habeas Corpus Petition12	

TABLE OF CONTENTS (continued)

Page

II. THE FEDERAL MAILBOX RULE DOES NOT APPLY TO THE FILING OF HABEAS CORPUS PETITIONS IN STATE COURT 16

CONCLUSION 19

TABLE OF AUTHORITIES

	Page
Cases	
Artuz v. Bennett 121 S.Ct. 361 (2000)	16, 17
Adams v. LeMaster 223 F.3d 1177 (10th Cir. 2000)	16, 17
Browder v. Director, Dept. of Corrections of Illinois 434 U.S. 257(1978)	9, 10
Calderon v. District Court (Gordon) 107 FR.3d 756 (9th Cir. 1997)	14
Coleman v. Johnson 184 F.3d 398 (5th Cir. 1999)	17
Davenport v. United States 217 F.3d 1341 (11th Cir. 2000)	13
Greenawalt v. Stewart 105 F.3d 1268 (9th Cir. 1997)	14
Harris v. Nelson 394 U.S. 286 (1969)	9, 10
Order of Railroad Telegraphers v. Railway Express Agency, Inc. 321 U.S. 342 (1944)	10
Rose v. Lundy 455 U.S. 509 (1982)	11, 14

TABLE OF AUTHORITIES (continued)

	Page
Slack v. McDaniel 120 S.Ct. 1595 (2000)	6, 8, 16
Teague v. Lane 489 U.S. 288 (1989)	11
United States v. Craycraft 167 F.3d 451 (8th Cir. 1999)	13
United States v. Duffus 174 F.3d 333 (3rd Cir. 1999)	13
United States v. Espinoza-Saenz 235 F.3d 501 (10th Cir. 2000)	13
United States v. Pittman 209 F.3d 314 (4th Cir. 2000)	13
United States v. Thomas 221 F.3d 430 (3rd Cir. 2000)	13

Statutes

Title 28, United States Code	
§ 1254(1)	2
§ 2244	2
§ 2244(d)	7, 15
§ 2244(d)(2)	17
§ 2254	3, 7, 9

TABLE OF AUTHORITIES (continued)

	Page
California Penal Code	
§ 187	4
§ 192(a)(1)	4
Court Rules	
Federal Rules of Civil Procedure	
Rule 5	4
Rule 5(c)	6, 7, 9-15
Rule 9(a)	4, 11
Rule 11	9
Rule 12(b)(6)	10
Rule 15(c)(2)	12
Rule 33	9
Rule 60(b)(6)	10
Rule 81(a)(2)	9

IN THE SUPREME COURT OF THE UNITED STATES

No.

STEVEN CAMBRA, Warden, *Petitioner,*

v.

MICHAEL ANTHONY, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

Petitioners, the People of the State of California and the Attorney General of the State of California (hereafter, the State), respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, filed on December 15, 2000, appears at Appendix A to the petition and is reported at 236 F.3d 568 (9th Cir. 2000). The Ninth Circuit's January 26, 2001, order denying the State's petition for rehearing and suggestion for rehearing en banc appears at Appendix B.

The unreported district court opinion holding respondent Anthony's petition for writ of habeas corpus in abeyance

appears at Appendix C. Its opinion denying the State's motion to vacate the order holding the petition in abeyance and dismiss the petition as untimely appears at Appendix D. The district court's opinion denying Anthony's request to amend his habeas corpus petition appears at Appendix E and is reported at 21 F.Supp.2d 1094 (N.D.Ca. 1998). The unreported opinion of the district court denying the petition for writ of habeas corpus on the merits appears at Appendix F.

The California Supreme Court's order denying Anthony's petition for writ of habeas corpus on procedural grounds appears at Appendix G.

STATEMENT OF JURISDICTION

The Ninth Circuit issued its opinion on December 15, 2000. It denied the State's petition for rehearing and suggestion for rehearing en banc on January 26, 2001. The Ninth Circuit's mandate issued on February 6, 2001. Jurisdiction of this Court is timely under 28 U.S.C. § 1254(1).

STATUTES AND RULES

Section 2244 of Title 28 of the United States Code provides in pertinent part:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claims is pending shall not be counted toward any period of limitation under this subsection.

Section 2254 of Title 28 of the United States Code provides in pertinent part:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Rule 15 of the Federal Rules of Civil Procedure provides in pertinent part:

> (c) An amendment of a pleading relates back to the date of the original pleading when
>
> (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
>
> (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or . . . .

Rule 9(a) of the Rules Governing Section 2254 Cases provides in pertinent part:

> (a) A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

STATEMENT OF THE CASE

A state jury convicted respondent (hereafter, Anthony) of first degree murder (Cal. Pen. Code, § 187) and conspiracy to commit murder (Cal. Pen. Code, § 182). The jury found true the financial gain special circumstance. Cal. Pen. Code, § 192(a)(1). Anthony was sentenced to life without possibility of parole. On June 30, 1992, the California Court of Appeal

affirmed the judgment in an unpublished opinion. The California Supreme Court denied review on September 24, 1992.

On April 23, 1997, Anthony filed a petition for writ of habeas corpus containing both exhausted and unexhausted claims in the United States District Court for the Northern District of California. The district court dismissed this "mixed" petition on its own motion. Anthony did not appeal this dismissal. He also filed a habeas corpus petition in the state Supreme Court. Although the state Supreme Court filed the petition on April 25, 1997, the federal district court deemed the petition filed April 21, 1997, applying the federal "mailbox rule."

On June 13, 1997, Anthony filed a new petition in federal district court with one exhausted claim. That petition had a different case number than the dismissed "mixed" petition. However, the district court construed this petition as an "amendment" of the "mixed" petition, although that petition was no longer pending. On July 8, 1997, the district court issued an order to show cause.

On July 30, 1997, the California Supreme Court denied Anthony's habeas corpus petition.

On September 23, 1997, Anthony filed a motion to hold his habeas petition in abeyance, which the district court granted.[1/] The court noted the state Supreme Court had already denied Anthony's state habeas petition. The State moved to vacate the order holding the petition in abeyance and to dismiss

---

1. Apparently, Anthony had filed a motion to stay the petition on June 13, 1997, when he filed his exhausted petition, but the district court did not rule on that motion.

the petition as untimely. On February 18, 1998, the district court denied this motion.

On March 23, 1998, Anthony moved to amend the petition with newly exhausted claims. On August 5, 1998, the district court denied the motion as an abuse of the writ and reinstated the order to show cause. On January 20, 1999, the court denied the petition for writ of habeas corpus.

On February 19, 1999, the federal district court granted Anthony's motion for certificate of probable cause to appeal to the United States Court of Appeals. On July 27, 1999, the Ninth Circuit granted Anthony's request to broaden certification with respect to the district court's denial of his motion to file an amended habeas corpus petition.

While the case was pending in the Ninth Circuit, this Court issued its opinion in *Slack v. McDaniel*, 120 S.Ct. 1595 (2000). The State acknowledged that, in light of *Slack*, the district court erred in basing its denial of the motion to amend on the ground of abuse of the writ. However, the State argued that the denial of the motion to amend was proper because the petition itself was not timely, and that even if the petition was timely, the amendments were untimely and the relation back doctrine under Rule 15(c) of the Federal Rules of Civil Procedure (FRCP) did not apply.

On December 15, 2000, the Ninth Circuit filed its decision. The Court reversed the district court's order denying Anthony's motion to amend the petition. Reasoning that the purpose of a statute of limitations is to provide timely "notice," the Ninth Circuit held that a dismissed mixed petition provides "notice" of unexhausted claims that are subsequently exhausted. It also held that the "relation back" doctrine of FRCP Rule 15(c) applies to habeas corpus proceedings. The Ninth Circuit found that the district court properly deemed Anthony's June 13, 1997,

petition as being an amendment of the mixed petition he filed on April 23, 1997, even though that petition was not pending because it had been dismissed. Although the one year statute of limitations had run before Anthony attempted to amend the petition, the Ninth Circuit held that the relation back doctrine applied, and that the district court should have allowed the amendments.

The court also held that the federal mailbox rule applied to the filing of Anthony's petition for writ of habeas corpus in the California Supreme Court. Therefore, it held that the state petition was effectively filed on April 21, 1997, two days before the one year statute of limitation of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) ran. 28 U.S.C. § 2244(d).[2/]

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's opinion addresses issues that are currently exceptionally important in litigating petitions for writ of habeas corpus filed by state prisoners pursuant to 28 U.S.C. § 2254. The Ninth Circuit decision creates a device that eviscerates the AEDPA's one year statute of limitation by allowing the use of FRCP Rule 15(c) without any requirement of timeliness. Under the Ninth Circuit's procedure, all a state prisoner need do is file an improper *mixed* petition within the one year time limit. Such a defective petition must be dismissed, but under circuit authority may be amended to state only exhausted claims and then held in abeyance indefinitely. The state prisoner may then exhaust the other claims in state

---

2. The Ninth Circuit upheld the district court's denial of the petition for writ of habeas corpus on the one issue which was addressed on the merits; the State does not seek certiorari of that portion of the opinion.

court at his leisure, and file a second amended petition containing the newly exhausted claims without any specific time constraints.

The Ninth Circuit's analysis and application of Rule 15(c) conflict with the intent of Congress in enacting the AEDPA, and with decisions in other circuits.

There is also a conflict among the circuit courts of appeals on the propriety of a federal court applying the mailbox rule, announced in *Houston v. Lack*, to the filing of pleadings in *state* courts.

In order to ensure that the intent of Congress in enacting the one year statute of limitation in the AEDPA is not thwarted, and to ensure finality of state court judgments, we respectfully ask this Court to grant the petition for writ of certiorari.

ARGUMENT

I.

THE NINTH CIRCUIT'S APPLICATION OF THE RELATION BACK DOCTRINE IN HABEAS CORPUS CASES EFFECTIVELY NULLIFIES THE AEDPA'S ONE YEAR STATUTE OF LIMITATIONS

A. FRCP Rule 15(c) Does Not Apply To Habeas Corpus Actions Brought By State Prisoners

Habeas corpus proceedings are characterized as "civil" in nature. *See Browder v. Director, Dept. of Corrections of Illinois*, 434 U.S. 257, 265 n. 9, 269 (1978). However, such a "label is gross and inexact." *Harris v. Nelson*, 394 U.S. 286, 293-94 (1969). FRCP Rule 81(a)(2) provides that the FRCP apply to habeas corpus cases "to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions." Similarly, Rule 11 of the Rules Governing Section 2254 Cases provides that the FRCP "to the extent that they are not inconsistent with these rules, may be applied when appropriate, to petitions filed under these rules." The Advisory Committee Notes to Rule 11 state: "Rule 11 permits application of the civil rules only when it would be appropriate to do so," and emphasize courts should not "rigidly apply [FRCP] rules which would be inconsistent or inequitable in the overall framework of habeas corpus." Hence, not all of the FRCP apply to habeas corpus proceedings.

This Court has held that certain FRCP rules do not apply to habeas corpus proceedings. For example, in *Harris v. Nelson*, 394 U.S. at 298, the Court held that FRCP Rule 33, addressing the use of interrogatories, does not apply to habeas

corpus. The *Harris* Court noted that habeas proceedings are "unique," and "[h]abeas corpus practice in the federal courts has conformed with civil practice *only in the general sense*." *Id.* at 294 (emphasis added). The Court observed that the drafters' intent in the 1938 creation of the FRCP "indicates nothing more than a general and nonspecific understanding that the rules would have *very limited* application to habeas corpus proceedings." *Id.* at 295 (emphasis added). The Court examined the fundamental differences between civil actions and habeas corpus proceedings in reaching its conclusion. See, *id.* at 296; see also, *Browder,* 434 U.S. at 269, n.14 (FRCP Rule 12(b)(6) is inconsistent with habeas practice); *Pitchess v. Davis*, 421 U.S. 482, 488-89 (1975) (FRCP Rule 60(b)(6) is inapplicable to habeas corpus since it would effectively defeat exhaustion requirement).

There is nothing in the AEDPA, Congressional intent or understanding of habeas corpus cases, or Rule 15(c) itself, to support application of "relation back" to habeas corpus proceedings. The relation back doctrine finds its rationale in the purpose served by general statutes of limitation governing civil actions, i.e., to prevent the bringing of stale claims. The unfairness in asserting claims after expiration of the limitation period is minimized if the new claims arise out of claims previously made known to the defendant. In this sense, civil limitations periods serve to prevent delay and ensure a defendant is not unfairly prejudiced in his ability to defend against a claim when evidence may have disappeared and witnesses' memories may have faded. See *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944).

Before the AEDPA, when Rule 15(c) was drafted, there was no statutory limitation period for filing a federal habeas corpus petition. Hence, the drafters of Rule 15(c) clearly did not contemplate Rule 15(c) applying to habeas corpus cases. By

contrast, in habeas corpus proceedings, the forgoing concerns have long been addressed not by Rule 15(c), but by Rule 9(a) of the Rules Governing Section 2254 Cases, which permits the dismissal of a habeas petition if delay in its filing has prejudiced the state in its ability to respond.

Congress did not enact the AEDPA limitations period to serve a purpose already served by the existing habeas corpus rule. Instead, the AEDPA's limitations period was designed to minimize delay that may occur on collateral review of state court criminal judgments, and to foster finality of state criminal judgments. "'The interest in leaving concluded litigation in a state of repose'" free from "'further judicial revision has played a defining role in shaping the scope of the writ.'" *Teague v. Lane*, 489 U.S. 288, 306 (1989). To achieve this goal, the limitations period ensures that federal habeas petitions by state prisoners are brought and resolved in a timely fashion: that every habeas claim is presented within one year of finality of direct review of the judgment.

Nevertheless, the Ninth Circuit has invoked Rule 15(c) as an end run around the AEDPA limitations period. The Ninth Circuit's majority opinion, applying Rule 15(c) to permit new habeas corpus claims that would be untimely under the AEDPA, renders both the exhaustion requirement and the statute of limitations meaningless. It encourages a petitioner seeking delay to file a mixed petition before the limitations period expires, without any effort to first exhaust all claims in the state court; it removes any incentive to then proceed through the state court with due diligence; and it affords insulation from the statute of limitations by rewarding the state prisoner for first filing a defective mixed petition. The one-year limitations period to file a fully *exhausted* petition is thus effectively nullified, as is this Court's "simple and clear instruction to potential litigants: before you bring any claims to federal court, be sure that you first have taken each one to state court." *Rose*

v. Lundy, 455 U.S. 509, 520 (1982). Congress cannot have intended the easy circumvention of the AEDPA approved by the Ninth Circuit.

Plainly, the relation back doctrine of Rule 15(c) ought not to apply to habeas corpus proceedings, and the Ninth Circuit's decision should be reversed.

B. Even If Rule 15(c) Applies To Habeas Corpus Proceedings, It Can Only Apply If The New Claims Relate To Claims In A Currently Pending Habeas Corpus Petition

Under Rule 15(c)(2), an amendment relates back to the date of the original pleading only when it "arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading." The Ninth Circuit's opinion fails to analyze or apply this requirement. Instead, it finds that the mixed petition, which was dismissed and therefore no longer pending in the district court, gave "notice" to the State of the unexhausted claims, thereby triggering automatic relation back under Rule 15(c). This analysis is seriously flawed. First, the State cannot have "notice" from a pleading which has been summarily dismissed by the district court on its own motion, as in the instant case.[3] Second, the only petition pending in this case – the petition filed on June 13, 1997 – contained only one claim, and none of the claims which Anthony sought to add arose out of the conduct, transaction or occurrence set forth in that pleading.

---

3. Indeed, to our knowledge, the State was never served with Anthony's "mixed" petition, which was summarily dismissed by the district court. The State can hardly have "notice" of claims in a pleading it does not know about.

Other circuits that have found that Rule 15(c) applies to habeas corpus cases have done so in very limited fashion, recognizing that any broader approach interferes with the AEDPA. Thus, the third, fourth, eighth and eleventh circuits have held that, for purposes of habeas corpus petitions, the "occurrence" in Rule 15(c) is not the state prisoner's trial; this would be "too high a level of generality. . . . Such a broad view of 'relation back' would undermine the limitations period set by Congress in the AEDPA." *United States v. Pittman*, 209 F.3d 314, 318 (4th Cir. 2000); *Davenport v. United States*, 217 F.3d 1341, 1344-46 (11th Cir. 2000). Instead, "in order to relate back, the untimely claim must have arisen from the 'same set of facts' as the timely filed claim, not from separate conduct or a separate occurrence in 'both time and type.'" *Davenport*, 217 F.3d at 1344. Thus, new claims of ineffective assistance of counsel, where the timely petition asserted ineffective assistance of counsel on other grounds, cannot relate back. *Id.* (new claims of ineffective assistance of counsel arose from separate conduct and occurrences in both time and type); *United States v. Espinoza-Saenz*, 235 F.3d 501, 505 (10th Cir. 2000) (same); *United States v. Craycraft*, 167 F.3d 451, 457 (8th Cir. 1999)(same); *United States v. Duffus*, 174 F.3d 333, 337-38 (3rd Cir. 1999) (same); *United States v. Pittman*, 209 F.3d at 318 (same).

Accordingly, if Rule 15(c) applies to habeas proceedings at all, it does so "*if and only if* . . . the proposed amendment does not seek to add a new claim or to insert a new theory into the case." *United States v. Thomas*, 221 F.3d 430, 431, 435 (3rd Cir. 2000) (to allow a habeas petitioner to amend his petition by adding a new ground for relief after the limitation period has run would frustrate the intent of Congress that federal habeas claims be advanced within one year after a state conviction is final); accord, *Davenport v. United States*, 217 F.3d at 1346.

The Ninth Circuit opinion conflicts with all the basic principles set forth above. The Ninth Circuit reasons that the foregoing cases are distinguishable because the petitioners there attempted to add completely new claims outside the limitations period, whereas here, the state had prior "notice" of the claims because "Anthony's amended petition was included (in unexhausted form) in his original April 23 petition, to which the district court construed his June 13 filing as an amendment." Appendix A, pp. 21-22. This analysis ignores the fact the petition to which the amended petition purportedly related back no longer existed, so there were no pending claims to which the new claims could "relate." Whether the exhausted petition filed on June 13 is considered an amendment of the mixed petition, or a new petition, *it* was the only existing petition pending before the district court and the petition which Anthony sought to amend. That petition contained *only* one claim. To apply rule 15(c) on the theory the State has "notice" of unexhausted claims presented in a mixed petition that was summarily *dismissed* by the district court[4] is a device to sidestep the AEDPA's statute of limitations and the exhaustion requirement.

---

4. This Court held that "a district court *must dismiss* habeas petitions containing both unexhausted and exhausted claims." *Rose v. Lundy*, 455 U.S. at 522 (emphasis added.) A district court may not hold a *mixed petition* in abeyance. *Greenawalt v. Stewart*, 105 F.3d 1268, 1274-75 (9th Cir. 1997). A petitioner may elect to proceed *solely* with his exhausted claim by amending his habeas petition to exclude the unexhausted claims, *or* he may go back to state court to exhaust additional claims and then return to federal court with a *fully exhausted* petition. *Id.* at 510. But in any case, unexhausted claims *must be dismissed. Id.; Calderon v. District Court (Gordon)*, 107 FR.3d 756, 760 (9th Cir. 1997).

Properly viewed, if the relation back doctrine is to be applied to habeas petitions, the untimely new claims must arise out of the same conduct, transaction or occurrence as claims asserted in a *properly* filed habeas petition, not claims in a defective petition which has been properly dismissed. A contrary construction amounts to judicial recission of the AEDPA's statute of limitations period for state prisoners.

We respectfully submit that this Court should grant the petition for writ of certiorari to clarify that Rule 15(c) does not apply to habeas corpus proceedings. If it does apply, this Court should clarify its application to ensure enforcement of 28 U.S.C. § 2244(d).

II.

THE FEDERAL MAILBOX RULE DOES NOT APPLY TO THE FILING OF HABEAS CORPUS PETITIONS IN STATE COURT

This Court should also grant the petition because the Ninth Circuit opinion conflicts with other circuit courts of appeals on the applicability of the federal mailbox rule, announced in *Houston v. Lack*, 487 U.S. 266, to petitions for writ of habeas corpus filed in *state* courts. We also submit that the Ninth Circuit's opinion is inconsistent with this Court's recent decision in *Artuz v. Bennett*, 121 S.Ct. 361 (2000).

The Ninth Circuit applied the federal mailbox rule to the habeas corpus petition Anthony filed in the California Supreme Court, reasoning that "the conditions that led to the adoption of the mailbox rule [in *Houston v. Lack*] are present; the prisoner is powerless and unable to control the time of delivery of documents to the court." Appendix A at pp. 17-18. The Ninth Circuit opinion thus usurped the role of the California Supreme Court in formulating filing procedures for state courts.

In contrast, the Tenth Circuit, in *Adams v. LeMaster*, 223 F.3d 1177 (10th Cir. 2000), held that federal courts do not apply the federal mailbox rule to state habeas petitions:

> [T]he *Houston* decision is not binding on state courts . . . . Each state court must look at its own statutory structure and rules of interpretation . . .
>
> * * *
>
> We do not quarrel with the propriety of the mailbox rule as a solution to the unique problems of a pro se prisoner confronted with a rapidly-

> approaching filing deadline. . . . However, at the risk of stating the obvious, the policy reasons in support of the rule are only relevant when a deadline exists. . . . New Mexico places no time limits on filing a state habeas petition. Therefore, the policy arguments at the core of *Houston* are inapplicable . . . .

Id. at 1183. The Fifth Circuit also concluded that the mailbox rule does not apply to state habeas petitions. *Coleman v. Johnson*, 184 F.3d 398 (5th Cir. 1999).

Like New Mexico, California does not have a statutory time limit for filing habeas corpus petitions. While the state has applied a mailbox rule to pleadings with statutory time deadlines, we are unaware of any cases applying it to the filing of habeas corpus applications. California does recognize *procedural bars* to claims in habeas petitions. However, state procedural bars on claims within a petition do not preclude the *petition* itself from being "properly filed" for purposes of tolling under the AEDPA. *Artuz v. Bennett*, 121 S.Ct. at 364-365.

In *Artuz*, this Court held that an application for habeas corpus relief is "properly filed" under 28 U.S.C. § 2244(d)(2) when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. "An application is 'filed,' as that term is commonly understood, when it is *delivered to, and accepted by the appropriate court officer for placement into the official record.*" *Id.* at 363-64 (emphasis added). This Court was presumably referring to the *state's* laws and rules governing filings.[5/]

---

5. Anthony's state petition was delivered to and accepted by the California Supreme Court on April 25, 1997, two days after the one-year AEDPA limitations period had expired. It was "properly filed" under state law and § 2244(d)(2) on that date. Since Anthony had no other fully exhausted state or

We respectfully submit that in order to reconcile the conflict among the circuits, this Court should grant the petition.

---

federal habeas petition pending at the time, he missed the one-year AEDPA limitations period, and his entire petition should have been dismissed by the federal court as untimely.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be granted.

Dated: March 27, 2001

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

DAVID P. DRULINER
Chief Assistant Attorney General

RONALD A. BASS
Senior Assistant Attorney General

STAN M. HELFMAN
Supervising Deputy Attorney General

SHARON G. BIRENBAUM
Deputy Attorney General
Counsel of Record

Counsel for Petitioner

I:\All\I Team Three\Birenbaum\Anthony, Michael (Pet for Writ of Cert).wpd